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October 15, 2015  
*via electronic filing*

Marlene H. Dortch, Secretary  
Office of the Secretary  
Federal Communications Commission  
445 12th Street, SW, Room TW-A325  
Washington, D.C. 20554

Re: Opposition to Tunuva's Petition for Exemption from the  
Commission's Closed Captioning Rules  
CGB Docket No. 06-181

**Tunuva Media, LLC**  
CGB-CC-1351

Dear Ms. Dortch:

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), National Association of the Deaf (NAD), Cerebral Palsy and Deaf Organization (CPADO), Association of Late Deafened Adults (ALDA), Deaf Seniors of America (DSA), American Association of the Deaf-Blind (AADB), and California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH), collectively, "Consumer Groups," submit for filing in the above-captioned proceeding their opposition to the petition for exemption from the Commission's closed captioning requirements filed by Tunuva Media, LLC ("Tunuva"), for its program-length commercials.

\* DC bar membership pending. Practice supervised by members of the DC bar.

\*\* Admitted to bars of Washington State, the United States Court of Appeals for the District of Columbia Circuit, and the United States District Court of the District of Columbia.

Tunuva does not meet the statutory requirements necessary to support an exemption from the closed captioning rules. It has failed to demonstrate that compliance with the closed captioning requirements would be economically burdensome. Consumer Groups urge the Commission to deny the petition and require that Tunuva caption its programming within 90 days.

## **I. Legal Standard**

Under Section 713(d)(3) of the Communications Act of 1934, as amended, a video programming provider may petition the Commission for a full or partial exemption from the Commission's closed captioning requirements if compliance would be "economically burdensome." When determining whether a petitioner has made the required showing under the economically burdensome standard, the Commission considers the following factors on a case-by-case basis: (1) the nature and cost of the closed captions for the programming; (2) the impact on the operation of the provider or program owner; (3) the financial resources of the provider or program owner; and (4) the type of operations of the provider or program owner. The Commission will assess the overall financial resources available to a petitioner by looking at a petitioner's current assets, current liabilities, revenues, expenses, and other documentation "from which its financial condition can be assessed."<sup>1</sup>

## **II. Background**

Tunuva is a commercial business that produces program-length commercials for its clients, local area car dealers and mortgage companies. The commercials are market- and client-specific.<sup>2</sup> For example, in its petition, Tunuva explains that "a commercial might feature used cars held in inventory by a Nissan dealer in the Los Angeles Designated Market Area ('DMA')."<sup>3</sup> A typical commercial is about 28 minutes in length and is aired on one or more television stations in the same DMA. Tunuva produces approximately 10 to 16 commercials per week.<sup>4</sup> It contracts with unspecified local

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<sup>1</sup> *First Baptist Church, Jonesboro, Arkansas*, 29 FCC Rcd 12833, ¶¶13-14 (2014); see also *First United Methodist Church of Tupelo*, Dkt. No. 06-181, DA 15-154, ¶13 (Feb. 3, 2015); *Curtis Baptist Church*, 29 FCC Rcd 14699, ¶14 (2014); *First Lutheran Church of Albert Lea*, 29 FCC Rcd 9326, ¶¶14-15 (2014).

<sup>2</sup> See *Tunuva Supplement (1 of 5)*, p. 2 (February 20, 2015).

<sup>3</sup> See *Tunuva Petition*, p. 3 (June 10, 2014).

<sup>4</sup> *Tunuva Third Supplement*, p. 4 (July 29, 2015).

television stations to air the commercials, generally during the Saturday and Sunday "early morning day-parts."<sup>5</sup>

Tunuva submitted its petition for exemption from captioning on June 10, 2014 (the "Petition").<sup>6</sup> On December 23, 2014, the Bureau rejected Tunuva's arguments that it was entitled to a categorical exemption and requested additional information necessary to determine whether captioning would be economically burdensome.<sup>7</sup> Tunuva submitted a supplement on February 20, 2014.<sup>8</sup> However, because the filing still did not contain all of the required financial information, the Bureau sent a second request for additional information.<sup>9</sup> Tunuva failed again to provide complete financial information in its second supplement.<sup>10</sup> The Bureau requested disclosure of financial information for a third and final time in May 2015,<sup>11</sup> and Tunuva responded by sending a third supplement.<sup>12</sup> The Bureau placed the petition on Public Notice on September 15, 2015.<sup>13</sup>

### **III. Tunuva has not demonstrated that it would be economically burdensome to caption its programming.**

According to its petition, Tunuva has the option to provide its own captioning in-house. Tunuva explains in its final supplement that it could caption its programming at an annual rate of \$60,000, plus one-time fees totaling \$31,000—including \$12,000 for two edit stations and \$19,000 for closed captioning software.<sup>14</sup> Because Tunuva is a production company, an in-house captioning option is likely the most cost-efficient in the long term. Taking control of the captioning process would not only result in lower annual captioning costs after the initial investment, but the business would also benefit from self-ensuring the quick turnarounds that its advertisements require. In the long

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<sup>5</sup> See *Tunuva Supplement (1 of 5)*, p. 2 (February 20, 2015).

<sup>6</sup> *Tunuva Petition* (June 10, 2014).

<sup>7</sup> *Consumer and Governmental Affairs Bureau Comment and Request for Information* (December 23, 2014).

<sup>8</sup> *Tunuva Supplement* (February 20, 2015).

<sup>9</sup> *Consumer and Governmental Affairs Bureau Second Request for Information* (March 15, 2015).

<sup>10</sup> *Tunuva Second Supplement* (March 31, 2015).

<sup>11</sup> *Consumer and Governmental Affairs Bureau Third Request for Information* (May 28, 2015).

<sup>12</sup> *Tunuva Third Supplement* (July 29, 2015).

<sup>13</sup> *Request for Comment on Request for Exemption from Commission's Closed Captioning Rules*, Public Notice, DA 15-1029, Dkt. 06-181 (September 15, 2015) (September Public Notice).

<sup>14</sup> See *Tunuva Third Supplement*, p. 5 (July 29, 2014).

run, this total would work out to be considerably lower than if Tunuva outsourced to a captioning service.

Even if Tunuva decides to outsource its captioning work, it still would not be economically burdensome because it has both net revenues and net current assets that are sufficient to cover the cost of captioning.

Based on Tunuva's lowest captioning quote, Tunuva could caption its programs at a rate of \$150 per program, which includes a captioning fee of \$75 per program and a \$75 same-day turnaround fee.<sup>15</sup> Since Tunuva produces approximately 10 to 16 programs per week, Tunuva would be able to caption its content for approximately \$78,000 to \$124,800 annually.<sup>16</sup>

If Tunuva foregoes in-house captioning and uses this lowest quoted service, it would not be economically burdensome. Tunuva ended 2013 and 2014 with net revenue. In 2014, the organization reported \$5,343,348 of revenue and \$1,902,000 in expenses,<sup>17</sup> which resulted in \$3,441,348 of net revenue. In 2013, it reported \$9,062,479 in revenue and \$2,219,301 in expenses,<sup>18</sup> which resulted in \$6,843,178 of net revenue. Even with annual captioning costs of \$78,000 to \$124,800, the organization would still have to \$3,316,548 to \$3,363,348 left in profit for 2014 and approximately \$6,718,378 to \$6,765,178 left in 2013.<sup>19</sup>

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<sup>15</sup> *Tunuva Supplement (1 of 5)*, p. 21-22 (February 20, 2014).

<sup>16</sup> *Tunuva Supplement (Part 1 of 5)*, p. 21 (3Play Media quote) (February 20, 2015).

<sup>17</sup> *Tunuva Supplement (Part 1 of 5)*, p. 7 (February 20, 2015).

<sup>18</sup> *Id.*

<sup>19</sup> Tunuva provides "net income" figures in its petition of \$932,351 in 2013 and \$26,743 in 2014. See *Tunuva Supplement (Part 1 of 5)*, p. 7, (February 20, 2015). However, Tunuva does not explain the calculation of these figures, and the figures stray from from the Bureau's traditional "revenue minus expenses" net revenue formula. However, even if Tunuva's "net income" figures are correct and relevant to the "economically burdensome" analysis, the organization's net current assets in 2014 and "net income" in 2013 would be more than sufficient to cover captioning costs even if Tunuva produced 16 commercials each week.

Moreover, Tunuva has ample net current assets from which it could also afford to caption. In 2014, Tunuva reported \$1,680,661 in current assets and \$753,934 in current liabilities,<sup>20</sup> which resulted in \$926,727 in net current assets. In 2013, Tunuva reported \$1,290,834 in current assets and only \$385,328 in current liabilities,<sup>21</sup> resulting in \$905,506 in net current assets. Even with annual captioning costs of \$78,000 to \$124,800, Tunuva would have had \$848,727 to \$801,927 in cash reserves remaining in 2014 and \$827,506 to \$780,706 in 2013.

Consumer Groups also acknowledge that Tunuva's petition seems to request a reprieve from the cost of doing business. Tunuva asserts, too quickly, that its costs cannot be passed onto its customers because it might lose business to newspaper advertisers. Consumer Groups find this prediction improbable and this argument irrelevant. Video advertising is completely distinct from print advertisements. It is unlikely that an advertiser would consider print and television advertisements' benefits as interchangeable enough to justify forgoing Tunuva's services in favor of cheaper newspaper ads.

Further, regardless of whether customers would seek out other advertisers, captioning is a basic cost of video programming. Even if raising prices would change how Tunuva charges its customer base, this should not be a factor in the Bureau's analysis. The Bureau's chief concern is to assess a petitioner's ability to provide captioning. Just as small companies are not excused from paying electricity bills or any other basic cost of doing business, Tunuva should not be relieved from its duty as a programmer to caption.

Therefore, because the organization's net revenue and net current assets are sufficient to cover captioning costs, Tunuva's petition should be denied because it would not be economically burdensome for the organization to caption its programming.

#### **IV. Conclusion**

For the reasons described above, Consumer Groups respectfully request that the Bureau deny the Petition. However, even if the Bureau finds that providing captioning would be economically burdensome, given the evolution of technology, potential drops in the cost of captioning over time, and the possibility that the financial status of a

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<sup>20</sup> *Tunuva Supplement (Part 4 of 5)*, p. 18-19 (February 20, 2015).

<sup>21</sup> *Tunuva Second Supplement*, p. 5 (March 31, 2015).

petitioner may change, the Bureau should refrain from granting lengthy or open-ended exemptions.

Sincerely,

/s/

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Drew Simshaw  
Angela Campbell  
Institute for Public Representation

Lindsay Buchanan  
*Georgetown Law Student*

*Counsel to TDI*

**Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI)**

/s/

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**CERTIFICATION**

Pursuant to 47 C.F.R. §§ 1.16 and 79.1(f)(9), I, Claude Stout, Executive Director, Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), hereby certify under penalty of perjury that to the extent there are any facts or considerations not already in the public domain which have been relied on in the foregoing document, these facts and considerations are true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Claude L. Stout". The signature is written in a cursive, flowing style.

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Claude Stout  
October 15, 2015



**CERTIFICATE OF SERVICE**

I, Niko Perazich, Office Manager, Institute for Public Representation, do hereby certify that, on October 15, 2015, pursuant to the Commission's aforementioned Public Notice, a copy of the foregoing document was served by first class U.S. mail, postage prepaid, upon the Petitioners at the address listed below.

Tunuva Media, LLC  
c/o Arthur V. Belendiuk  
Smithwick & Belendiuk, P.C.  
5028 Wisconsin Avenue, NW, Ste. 301  
Washington, DC 20016

/s/

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Niko Perazich  
Institute for Public Representation

October 15, 2015